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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Dominion  
Energy Utah to Make Tariff Modifications  
Relating to Transportation Service

**Docket No. 18-057-T04**

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**PREFILED DIRECT TESTIMONY OF**

**KEVIN C. HIGGINS**

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The Utah Association of Energy Users (“UAE”) hereby submits the Prefiled  
Direct Testimony of Kevin C. Higgins in this docket.

DATED this 12<sup>th</sup> day of September 2018.

HATCH, JAMES & DODGE



/s/ \_\_\_\_\_

Gary A. Dodge

Phillip J. Russell

*Counsel for the Utah Association of Energy Users*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 12<sup>th</sup> day of September 2018 on the following:

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**Direct Testimony of Kevin C. Higgins**

**On Behalf of the**

**Utah Association of Energy Users**

**September 12, 2018**

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**I. INTRODUCTION AND SUMMARY**

**Q. Please state your name and business address.**

A. My name is Kevin C. Higgins. My business address is 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

**Q. By whom are you employed and in what capacity?**

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting firm specializing in economic and policy analysis applicable to energy production, transportation, and consumption.

**Q. On whose behalf are you testifying in this proceeding?**

A. My testimony is being sponsored by the Utah Association of Energy Users (“UAE”).

**Q. Please summarize your qualifications.**

A. My academic background is in economics, and I have completed all coursework and field examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have served on the adjunct faculties of both the University of Utah and Westminster College, where I taught undergraduate and graduate courses in economics. I joined Energy Strategies in 1995, where I assist private and public sector clients in the areas of energy-related economic and policy analysis, including evaluation of electric and gas utility rate matters.

Prior to joining Energy Strategies, I held policy positions in state and local government. From 1983 to 1990, I was economist, then assistant director, for the Utah Energy Office, where I helped develop and implement state energy policy.

23 From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County  
24 Commission, where I was responsible for development and implementation of a  
25 broad spectrum of public policy at the local government level.

26 **Q. Have you previously testified before the Utah Public Service Commission**  
27 **(“Commission”)?**

28 A. Yes. Since 1984, I have testified in forty dockets before the Utah Public  
29 Service Commission on electricity and natural gas matters.

30 **Q. Have you testified previously before any other state utility regulatory**  
31 **commissions?**

32 A. Yes, I have testified in approximately 180 other proceedings on the  
33 subjects of utility rates and regulatory policy before state utility regulators in  
34 Alaska, Arkansas, Arizona, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas,  
35 Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New  
36 York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina,  
37 Texas, Virginia, Washington, West Virginia, and Wyoming. I have also filed  
38 affidavits in proceedings before the Federal Energy Regulatory Commission and  
39 prepared expert reports in state and federal court proceedings involving utility  
40 matters.

41 **Q. What is the purpose of your direct testimony?**

42 A. My direct testimony addresses the introduction of a new tariff provision  
43 proposed by Dominion Energy Utah (“DEU”), called “Hold Burn to Scheduled  
44 Quantity,” which pertains to Transportation Service (“TS”).

45 **Q. Please provide a summary of your conclusions and recommendations.**

46 A. I agree that it is useful to differentiate between capacity constraints, which  
47 are addressed by tariff provisions relating to interruptions, and supply constraints,  
48 which the proposed Hold Burn to Scheduled Quantity restriction is intended to  
49 address. Distinguishing between these two types of constraints lends clarity to the  
50 tariff. However, if the Hold Burn to Scheduled Quantity provision is adopted, I  
51 recommend the following changes:

52 1. The proposed \$25/Dth penalty for violating a Hold Burn to Scheduled  
53 Quantity restriction has no basis in cost causation, is unduly punitive, and should  
54 be rejected. TS customers have already demonstrated a high degree of  
55 responsiveness to price signals that are significantly more moderate than the  
56 proposed penalty. Before introducing a penalty of this magnitude, customers  
57 should be given the opportunity to demonstrate compliance with this new  
58 restriction when it is called. I recommend that the penalty should be no greater  
59 than \$5/Dth.

60 2. DEU proposes that the Hold Burn to Scheduled Quantity restriction be  
61 applied at the *individual* TS customer level rather than aggregated at the supplier  
62 level. This makes little sense to me. If there is concern about a supply event, then  
63 the most straightforward means to address the concern is at the supplier level.  
64 This is the level at which the issue is most effectively managed and it is also the  
65 level at which violations of the restriction would most appropriately be measured.

66                   3. On days in which the Hold Burn to Scheduled Quantity restriction is in  
67 effect, there should be no charges for positive daily imbalances in excess of the  
68 5% tolerance.

69                   4. In cases in which both a penalty for failure to interrupt and a penalty  
70 for violation of a Hold Burn to Scheduled Quantity restriction would apply to the  
71 same dekatherms, the penalty should be limited to the larger of the two.

72                   5. I recommend some wording changes in two parts of DEU's proposed  
73 tariff language for Section 3.02 that I believe are more reasonable than DEU's  
74 proposed language.

75

76                   **II. DEU'S PROPOSED "HOLD BURN TO SCHEDULED QUANTITY"**

77

**RESTRICTION**

78                   **Q. Briefly describe the Hold Burn to Scheduled Quantity restriction being**  
79 **proposed by DEU.**

80                   A.                   The newly-proposed Hold Burn to Scheduled Quantity restriction is a  
81 restriction that would be placed on transportation customers prohibiting each of  
82 them (on an individual basis) from using gas in excess of their confirmed  
83 schedules for gas received into the DEU system. Each TS customer would be  
84 penalized for any gas used above its scheduled quantity for the gas day. The Hold  
85 Burn to Scheduled Quantity restriction is distinct from an interruption. Whereas  
86 an interruption may be called due to capacity constraints on the DEU system, a  
87 Hold Burn to Scheduled Quantity restriction would be called when there are

88 concerns that the scheduled quantities will not meet the customer demand.<sup>1</sup> As  
89 explained by DEU witness Abigail Thomas, a Hold Burn to Scheduled Quantity  
90 restriction will be issued through an operational flow order (“OFO”), a process  
91 much like the process the Company historically used to call a “supply  
92 curtailment.”<sup>2</sup>

93 **Q. What penalty is DEU proposing for violating a Hold Burn to Scheduled**  
94 **Quantity restriction?**

95 A. DEU is proposing a penalty of \$25 per Dth, plus the index-based gas cost  
96 applied to the customer’s gas usage in excess of the daily restriction.<sup>3</sup>

97

98 **III. ASSESSMENT OF THE PROPOSED “HOLD BURN TO SCHEDULED**  
99 **QUANTITY” RESTRICTION**

100 **Q. Do you agree that it is useful to differentiate in the tariff between a Hold**  
101 **Burn to Scheduled Quantity restriction and an interruption?**

102 A. Yes. Making the distinction between a Hold Burn to Scheduled Quantity  
103 restriction and an interruption lends clarity to the tariff. As explained by Ms.  
104 Thomas, the two conditions are different: the former is intended to address a  
105 supply constraint, whereas the latter is intended to address a system capacity  
106 constraint. The two different constraints require different operational responses.  
107 For example, when DEU is experiencing supply problems, but is not capacity  
108 constrained, it makes sense to allow all TS customers (including interruptible

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<sup>1</sup> Direct Testimony of Abigail Thomas, lines 66-74.

<sup>2</sup> *Id.*, lines 46-50.

<sup>3</sup> *Id.*, lines 124-127.



109 customers) to continue to burn gas, so long as they do not exceed the volumes  
110 delivered on their behalf.

111 In the past, the distinction between these conditions has been blurred with  
112 confusing results. For example, I understand that at least one *firm* service TS  
113 customer has been penalized \$40/Dth for consuming gas in excess of its  
114 scheduled quantity during an *interruption*. That is, the customer was charged the  
115 penalty for *failure to interrupt* applied to its *firm* service because its firm service  
116 consumption was in excess of its scheduled quantity during an interruption – even  
117 though the customer’s consumption was *within* its firm contract limit.<sup>4</sup> The  
118 Company’s interpretation of its current tariff in this way is puzzling and may have  
119 been the result of conflating a supply constraint with a capacity constraint.  
120 Distinguishing in the tariff between conditions of supply constraint and capacity  
121 constraint as now proposed makes sense and should help avoid this kind of  
122 confusing situation.

123 **Q. Are you recommending any modifications to the terms proposed by DEU?**

124 A. Yes. I am recommending several changes. First, I recommend that the  
125 proposed \$25/Dth penalty be set at a lower level – specifically, no greater than  
126 \$5/Dth. The Hold Burn to Scheduled Quantity restriction is a brand new  
127 provision. The penalty should be sufficient to incent the desired scheduling  
128 behavior without being unreasonably punitive.<sup>5</sup> As it is a new provision, there is

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<sup>4</sup> This matter is the subject of a formal complaint by the customer filed at the Commission. I note here that I am not aware of any provision in the current DEU tariff that permits the \$40/Dth penalty to be applied to firm service in excess of scheduled delivery within the customer’s firm contract limit.

<sup>5</sup> For example, as proposed, a customer that exceeded its Hold Burn to Scheduled Quantity by 5,000 Dth on

129 no experience with customer behavior in responding to the Hold Burn to  
130 Scheduled Quantity restriction. Before introducing a penalty of this magnitude,  
131 customers should be given the opportunity to demonstrate compliance with this  
132 new restriction when it is called.

133 I note that TS customers have already demonstrated a high degree of  
134 responsiveness to price signals that are significantly more moderate than the  
135 proposed penalty. This has occurred, for example, in keeping daily imbalance  
136 levels within 5%. As reported by DEU, since the imposition of the Daily  
137 Transportation Imbalance Charge, the net annual daily imbalance has fallen from  
138 7.36% in 2014 to 5.39% in 2018, i.e., from 2.36% above the 5% tolerance to just  
139 0.39% above it.<sup>6</sup> The Daily Transportation Imbalance Charge levied on daily  
140 imbalances outside the 5% tolerance is currently \$0.07645/Dth – a small fraction  
141 of the \$25/Dth penalty being proposed in this case.

142 **Q. Does the proposed \$25/Dth penalty appear to have any relationship to cost**  
143 **causation or liquidated damages?**

144 A. I am not aware of such a relationship and none has been claimed by DEU.  
145 The penalty appears to be unduly punitive and arbitrary. Currently, DEU's tariff  
146 provides a \$25/Dth penalty for a customer that *repeatedly* ignores DEU's written  
147 instructions to adhere to balancing restrictions under an OFO.<sup>7</sup> My  
148 understanding, based on the discussion in the Technical Conference of August 29,  
149 2018, is that this extreme penalty has never actually been imposed. However,

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a given day would be penalized \$125,000.

<sup>6</sup> DEU Presentation, August 29, 2018 Technical Conference, slide 12.

<sup>7</sup> See DEU Tariff, page 5-16.

150 DEU is now proposing to impose this same penalty automatically in *every*  
151 *instance*, including inadvertent ones, in which the Hold Burn to Scheduled  
152 Quantity restriction is violated. This is simply too draconian a jump and is  
153 without a reasonable basis.

154 **Q. Why do you maintain that the proposed \$25/Dth penalty is unreasonable**  
155 **when it is less than the current \$40/Dth penalty for failure to interrupt?**

156 A. The \$40/Dth penalty for failure to interrupt is a significant. However, it at  
157 least has some nexus to cost causation, whereas the proposed \$25/Dth penalty for  
158 violating a Hold Burn to Scheduled Quantity restriction does not. The \$40/Dth  
159 penalty is applied to a customer that has elected to subscribe to interruptible  
160 service rather than firm service – and then fails to interrupt when called upon to  
161 do so. The \$40/Dth penalty effectively charges such a customer the difference  
162 between interruptible service and firm service measured over a full year at a 65%  
163 load factor. As such, this penalty, while severe, at least has some nexus to cost.<sup>8</sup>  
164 In contrast, the proposed \$25/Dth penalty for violating a Hold Burn to Scheduled  
165 Quantity restriction is applicable to both firm and interruptible TS customers, and  
166 is unrelated to cost. While I agree that it may be appropriate to send a price signal  
167 to customers during supply events, I see no reasonable basis for a penalty of  
168 \$25/Dth.

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<sup>8</sup> In addition, the load that the customer fails to interrupt is transferred to firm service for three years, an additional penalty that is also severe and that has no cost-causation basis. My recommendation for some wording changes to make this portion of the tariff more reasonable is addressed below.

169 **Q. What price signals are currently sent to customers when OFOs are issued?**

170 A. Currently, DEU's tariff provides for a daily balancing requirement of +/-  
171 5%. The current tariff gives DEU the right to suspend all or a part of the daily  
172 imbalance tolerance window under certain conditions when aggregate imbalances:  
173 (1) require the Company to take action to maintain system integrity, or (2)  
174 reasonably could be expected to force the Company to materially alter its prior  
175 day's planned level of (a) gas purchases, (b) Company production, or (c) storage  
176 injections or withdrawals.<sup>9</sup> A customer or nominating party that fails to comply  
177 with balancing restrictions so imposed is subject to a balancing penalty of the  
178 greater of \$1.00/Dth or the absolute value of the difference between the monthly  
179 market index price and the gas daily market index price plus \$0.25/Dth. Seen in  
180 this context, the proposed penalty for violating a Hold Burn to Scheduled  
181 Quantity restriction is effectively 25 times greater than the current penalty for  
182 violating a daily balancing restriction during an OFO. I do not believe such an  
183 extreme penalty is reasonable. A \$5 penalty is much more aggressive than the  
184 current penalty. I strongly recommend against a more severe penalty, particularly  
185 when there is reason to believe that a \$5 penalty is sufficient to incent the  
186 intended behavior.

187 **Q. Do you have other concerns regarding the proposed Hold Burn to Scheduled**  
188 **Quantity restriction?**

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<sup>9</sup> See DEU Tariff, page 5-15.

189 A. Yes. As proposed, the Hold Burn to Scheduled Quantity restriction  
190 would be applied at the *individual* TS customer level rather than aggregated at the  
191 supplier level. That is, even if a given supplier delivers enough gas to meet its  
192 customers' aggregate usage on the day(s) of a Hold Burn to Scheduled Quantity  
193 restriction, the supplier's individual customers that violate the restriction will be  
194 penalized nonetheless. This makes little sense to me. If there is concern about a  
195 supply event, then the most straightforward means to address the concern is at the  
196 supplier level. This is the level at which the issue is most effectively managed  
197 and it is also the level at which violations of the restriction would most  
198 appropriately be measured. Indeed, it is my understanding that OFOs triggered by  
199 supply constraints are in fact managed at the supplier level today. This concept is  
200 reinforced on page 20 of DEU Exhibit 1.5 where the Hold Burn to Scheduled  
201 Quantity OFO is called simultaneously with an Interruption. In this example,  
202 DEU identifies a quantity (25 Dth) of TS customer scheduled gas supply that "can  
203 be cut, redirected, or left on the system as imbalance." All of these remedies are  
204 best implemented at the supplier level. I recommend that DEU be instructed to  
205 propose modifications to its tariff language to address supply constraints and  
206 penalties at the supplier level.

207 **Q. Besides the fact that \$5/Dth is less than \$25/Dth, do you have additional**  
208 **reasons for believing that the former is a more reasonable penalty?**

209 A. Yes. My understanding is that one of DEU's concerns during a supply  
210 event is that suppliers might opt to use DEU's gas while remarketing their own

211 gas to users downstream. I do not know the extent to which such activity has  
212 previously occurred.<sup>10</sup> However, to the extent this is a concern, a \$5/Dth penalty  
213 represents about twice the price of gas commodity at current annual average  
214 prices. In addition to paying DEU for the gas, plus normal daily imbalance  
215 charges, a customer violating a Hold Burn to Scheduled Quantity restriction  
216 would pay a penalty equal to approximately twice the current price of gas if a  
217 \$5/Dth penalty is adopted. If a Hold Burn to Scheduled Quantity restriction is  
218 introduced into the tariff, I believe this is a more reasonable basis for a penalty  
219 than DEU's proposal.

220 **Q. Do you have any additional recommendations concerning implementation of**  
221 **the Hold Burn to Scheduled Quantity restriction?**

222 A. Yes. On days in which the Hold Burn to Scheduled Quantity restriction is  
223 in effect, there should be no charges for positive daily imbalances in excess of the  
224 5% tolerance. During supply events, customers who deliver more gas to the  
225 system than they consume are helping ensure system supply. It would be  
226 counterproductive to charge customers for positive daily imbalances on such  
227 days. Moreover, as a practical matter, to avoid the penalty for exceeding the Hold  
228 Burn to Scheduled Quantity restriction it may be necessary for TS customers to  
229 err on the side of over-delivering gas for the day, since they generally are not in a  
230 position to know their gas usage in real time. Therefore, it is also equitable to  
231 waive the positive imbalance charge when a Hold Burn to Scheduled Quantity

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<sup>10</sup> As I noted above, the \$25/Dth penalty for repeatedly ignoring daily balancing restrictions has never been imposed to my knowledge.

232 restriction is in effect in recognition of the strong signal to over-schedule that is  
233 being sent on such days.

234 **Q. Have you reviewed the examples attached to Ms. Thomas's direct testimony**  
235 **in DEU Exhibit 1.5?**

236 A. Yes, I have.

237 **Q. Do you have any comments on any of the specific examples?**

238 A. Yes. I have comments on two of the examples.

239 **Q. What is your first comment?**

240 A. My first comment pertains to the example on page 17 of DEU Exhibit 1.5.  
241 In this example, a Hold Burn to Scheduled Quantity OFO is issued because the  
242 Company experienced a supply disruption, but DEU does *not* call for  
243 interruptions. The customer in the example has a firm contract limit of 50 Dth,  
244 but burns 75 Dth. Clearly, 25 Dth are in excess of the Hold Burn to Scheduled  
245 Quantity restriction and are subject to the penalty for violating that restriction  
246 (\$25/Dth plus daily index price in DEU's example). I have no objection to this  
247 aspect the example, except for the \$25/Dth itself, which I have already addressed  
248 above.

249 But in addition to the \$25/Dth penalty, DEU maintains that the customer  
250 should *also* be subject to a \$40/Dth penalty on the same 25 Dth, which is  
251 considered to be "overrun" usage; that is, in addition to being in excess of the  
252 Hold Burn to Scheduled Quantity restriction, this 25 Dth is also in excess of the  
253 customer's contracted amount. As DEU notes in the example on page 18 of DEU

254 Exhibit 1.5, however, the TS customer in this example would be spared the  
255 \$40/Dth penalty if it had an additional contract for interruptible volumes such that  
256 its combined firm and interruptible contract limits were greater than its burn on  
257 that day.<sup>11</sup> In other words, the customer *could* have elected (at no incremental  
258 fixed cost) to contract for interruptible service in excess of its firm contract – in  
259 which case the customer would not have been subject to the additional \$40/Dth  
260 penalty. But having not procured the incremental interruptible service, the  
261 customer is, according to DEU, liable for an additional penalty that is equal to the  
262 failure to interrupt penalty.

263 This additional penalty makes no sense to me. First, no interruption has  
264 been issued in the example, and therefore the \$40/Dth “failure to interrupt”  
265 penalty should not even come into play. Second, by failing to secure an  
266 incremental interruptible contract, the customer has not saved any money – i.e.,  
267 there is no “gaming” opportunity here – the customer simply misjudged the  
268 amount of service it needed. The appropriate penalty in this example is the  
269 penalty for violating the Hold Burn to Scheduled Quantity restriction and nothing  
270 more – just as is the case for the customer on the following page of DEU Exhibit  
271 1.5 (p. 18), which assumes identical circumstances as the example on page 17,  
272 except the customer also has contracted for 30 Dth of interruptible service. For the  
273 customer in the example on page 17, there is no basis for charging the \$40/Dth  
274 failure to interrupt penalty and certainly no basis for requiring a forward-going

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<sup>11</sup> See also Direct Testimony of Abigail Thomas, lines 187-200. DEU confirmed at the August 29, 2018 Technical Conference that the customer would not be required to nominate any of its interruptible volumes to be spared the \$40/Dth penalty under the Hold Burn for Scheduled Quantity restriction.



275 three-year commitment to purchase *firm* service on the offending 25 Dth, when  
276 interruptible service would have sufficed from the beginning. If anything,  
277 imposition of this significant penalty in such circumstances will simply incent  
278 customers to contract for more interruptible service than they need.

279 **Q. What is your second comment?**

280 A. My second comment responds to the concept of a double penalty. In the  
281 example on page 17 of DEU Exhibit 1.5, discussed above, as well as in the  
282 example on page 21 of that exhibit, the customer is subject to a double penalty of  
283 \$65/Dth (\$25/Dth plus \$40/Dth) on certain dekatherms. In the first case, I have  
284 demonstrated that there is no logical basis for the \$40/Dth charge in the first  
285 place; thus, the double penalty should be moot for that example by virtue of that  
286 demonstration.

287 However, in the example on page 21, the customer is assumed to have  
288 violated *both* the Hold Burn to Scheduled Quantity restriction *and* the interruption  
289 notice for 15 Dth of its usage. And for that 15 Dth, DEU maintains that a double  
290 penalty of \$65 is called for.

291 I recommend against imposing such a double penalty. While I do not  
292 disagree that the customer in the example has violated two restrictions, the  
293 penalty should be limited, as a matter of reasonableness, to the maximum single  
294 penalty applicable. The larger penalty, \$40/Dth, is already very steep. When it is  
295 imposed, it is most likely the result of a communication or implementation error  
296 on the customer's part, rather than purposefully ignoring an instruction to

297 interrupt. In such a situation, I see little justification in compounding the cost to  
298 the customer by including the Hold Burn to Scheduled Quantity penalty on the  
299 same dekatherms, even if it would otherwise be applicable.

300

301

#### IV. DEU TARIFF LANGUAGE

302 **Q. Do you have any comments on DEU's proposed TS tariff language?**

303 A. Yes. I have two specific comments.

304 **Q. What is your first comment?**

305 A. DEU's proposed new language for a portion of the first paragraph of  
306 Section 3.02 under "Periods of Interruption" reads as follows:

307 Service under interruptible service rate schedules is subject to temporary  
308 periods of interruption upon notice by the Company, whenever the  
309 Company, in its sole discretion, determines interruption is required to  
310 serve customers with firm service.

311

312 This "sole discretion" language is new in this context<sup>12</sup> and I do not believe it is  
313 reasonable. I recommend that the clause "in its sole discretion" be removed. It is  
314 my understanding that, when a utility tariff has been approved by the  
315 Commission, it has the effect of law. My concern is that adding "sole discretion"  
316 language here might have unintended consequences. I would not want such  
317 language to be interpreted to allow the utility to abuse its discretion with impunity  
318 or to diminish the Commission's ability to grant relief to customers when  
319 appropriate. This language was not previously included in this section and I do  
320 not believe it should be added now.

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<sup>12</sup> I note that "sole discretion" is used in other sections in the DEU tariff. While I have a concern with the use of that term generally, those other sections are not at issue in this docket so I do not address them here.

321 **Q. What is your second comment?**

322 A. The “Failure to Interrupt” provisions of Section 3.02 automatically impose  
323 both a \$40/Dth penalty and a requirement of three years of firm service upon any  
324 failure to interrupt, regardless of the circumstances that led to the failure to  
325 interrupt. As discussed previously, both of these penalties are severe. And, while  
326 I acknowledge that there is some cost-based nexus for the \$40 penalty, there is no  
327 such nexus for the three-year firm service requirement. My understanding is that  
328 there may be times when a failure to interrupt is due to inadvertent or unusual  
329 circumstances that are not likely to repeat themselves. Under such circumstances,  
330 I do not believe that a three-year firm service requirement should automatically be  
331 imposed. Rather, I suggest that DEU’s proposed language in Section 3.02 be  
332 revised to something like the following:

333 If a customer fails to interrupt when **properly** called upon by the Company to do  
334 so, then beginning on July 1<sup>st</sup> following the failure to interrupt, the customer ~~will~~  
335 **may** be moved from the interruptible rate schedule to an available firm rate  
336 schedule for three years for those interruptible volumes it failed to interrupt so  
337 that the total firm amount for the next three years is equal to the amount burned  
338 during the interruption. If the customer is in this three-year firm period and uses  
339 volumes in excess of their firm amount during an interruption, the customer’s  
340 total firm amount ~~may will~~ be **adjusted equal** to the amount burned on the most  
341 recent interruption and the three-year penalty period ~~may will~~ begin again on the  
342 following July 1<sup>st</sup>. To the extent that the Company determines that providing firm  
343 service is operationally infeasible, then the customer ~~will~~ **may be required to** pay  
344 a demand charge that would have applied for those interruptible volumes it failed  
345 to interrupt for three years, beginning on July 1<sup>st</sup> following the failure to  
346 interrupt, but will continue to receive interruptible service. At the conclusion of  
347 the three year period the firm amount may be reduced upon request by the  
348 customer. **The conditions specified in this paragraph will be imposed unless the**  
349 **customer is able to demonstrate that a failure to interrupt was inadvertent and due**  
350 **to circumstances that are not likely to reoccur.**

351 I believe that a customer that can demonstrate that inadvertent and unusual  
352 circumstances caused its failure to interrupt should be permitted to avoid at least

353 one part of the two-part penalty for failure to interrupt. I believe this two-part  
354 penalty is appropriate only when a customer's failure to interrupt effectively  
355 demonstrates that it should have been on firm service in the first place, not under  
356 unusual circumstances that are unlikely to repeat themselves.

357 **Q. Does this conclude your direct testimony?**

358 **A.** Yes, it does.